

(c)(1) A petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

(2) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(d) The Board's final decision shall be issued within 90 days of the receipt of the petition for review and shall be served upon all parties by mail to the last known address, and on the Chief Administrative Law Judge (in cases involving an appeal from an administrative law judge's decision).

(e) If the Board concludes that the contractor has violated the Executive Order, the final order shall order action to abate the violation, which may include hiring the affected employee(s) in the same or a substantially equivalent position(s) to that which the employee(s) held under the predecessor contract, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of ineligibility sanctions, the Board shall also determine whether an order imposing ineligibility sanctions is appropriate.

(f) If a final order finding violations of the Executive Order is issued, the Board may assess against the successor contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the employee(s) in the proceeding.

(g) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters. The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of all relevant matter contained in the entire record before it. The Board shall not hear cases de novo or receive new evidence into the record.

(h) Proceedings under Executive Order 12933 are not subject to the Equal Access to Justice Act (Pub. L. 96-481).

Accordingly, in any proceeding conducted pursuant to the provisions of §§9.105-9.107, the Administrative Review Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act.

ENFORCEMENT REMEDIES

§9.108 What are the consequences to a contractor of not complying with the Executive Order?

(a) The Executive Order provides that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring employment of the predecessor contractor's employees and payment of wages lost.

(b) After an investigation and a determination by the Administrator that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld in a deposit fund as are necessary to pay the moneys due. Upon the final order of the Secretary that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(c) If the contracting officer or the Secretary finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with §9.6(c), the contracting officer may take such action as may be necessary to cause the suspension of the payment of funds until such time as the list is provided to the contracting officer.

§9.109 Under what circumstances will ineligibility sanctions be imposed?

(a) Where the Secretary finds that a contractor has failed to comply with any order of the Secretary or has committed willful violations of the Executive Order or these regulations, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or sub-contract of the United States for a period of three years.

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(b) Upon order of the Secretary, the names of persons or firms found to be ineligible for contracts in accordance with this section shall be added to the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," compiled, maintained and distributed by the General Services Administration in accordance with 48 CFR 9.404. No contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date the persons' or firms' name was entered on the electronic version of the list.

Subpart C—Definitions

§ 9.200 Definitions.

For purposes of this part:

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Contract means any prime contract subject wholly or in part to the provisions of the Executive Order.

Contracting officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

Executive Order or *Order* means Executive Order 12933 (59 FR 53559, October 24, 1994).

Federal Government means an agency or instrumentality of the United States which enters into a contract pursuant to authority derived from the Constitution and the laws of the United States.

Secretary means the Secretary of Labor or his/her authorized representative.

Service employee means any person engaged in the performance of recurring building services other than a person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of

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title 29, Code of Federal Regulations, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations, all or substantially all of the stock of which is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

APPENDIX TO PART 9—NOTICE TO BUILDING SERVICE CONTRACT EMPLOYEES

The contract for (type of service) services currently performed by (predecessor contractor) has been awarded to a new contractor. (successor contractor) will begin performance on (date successor contract begins).

As a condition of the new contract (successor contractor) is required to offer employment to the employees of (predecessor contractor) working at (the contract worksite or worksites) except in the following situations:

- Managerial or supervisory employees on the current contract are not entitled to an offer of employment.

- (successor contractor) may reduce the size of the current work force. Therefore, only a portion of the existing work force may receive employment offers. However, (successor contractor) must offer employment to the employees of (predecessor contractor) if any vacancies occur in the first three months of the new contract.

(successor contractor) may employ a current employee on the new contract before offering employment to (predecessor contractor's) employees only if the current employee has worked for (successor contractor) for at least three months immediately preceding the commencement of the new contract and would face layoff or discharge if not employed under the new contract.

- Where (successor contractor) has reason to believe, based on credible information from a knowledgeable source, that an employee's performance has been unsuitable on the current contract, the employee is not entitled to employment with the new contractor.

- If you are offered employment on the new contract, you will have at least ten (10) days to accept the offer.

Any employee of (predecessor contractor) who believes that he or she is entitled to an